

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

Various statutes and regulations require Federal agencies to obtain certain representations, certifications, and other statements from offerors in connection with the award of contracts. Offerors are required to complete the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. In addition, all offerors submitting a proposal in response to this solicitation must complete the representations, certifications, and other statements requested below.

TABLE OF CONTENTS

K.1	FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. (JAN 2006).....	1
K.2	FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION. (JUN 2000).....	2
K.3	DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)	4
K.4	DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE – ADVISORY AND ASSISTANCE SERVICES (JUN 1997)	8
K.5	AGREEMENT TO USE NON-FEDERAL EVALUATORS.....	9
K.6	SIGNATURE/CERTIFICATION	10

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

K.1 FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. (JAN 2006)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [*insert NAICS code*].

(2) The small business size standard is _____ [*insert size standard*].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (c) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (c) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (c) applies.

☐ (ii) Paragraph (c) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR CLAUSE	TITLE	DATE	CHANGE
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

K.2 FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION. (JUN 2000)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III. Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

- (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and
- (ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

[] (2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

[] (3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

[] (4) *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

K.3 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)

Notices

Section 2536 of Title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a prescribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a facility clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy facility clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE facility clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of certificate pertaining to foreign interests, Standard Form 328

- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a facility clearance for the contractor organization and access authorizations (security clearances) for contractor personnel working with the classified information or special nuclear material. To obtain a facility clearance the offeror must submit a certificate pertaining to foreign interests, Standard Form 328, and all required supporting documents to form a complete foreign ownership, control or influence (FOCI) package.
- (2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328 and prior to contract award, the contractor shall immediately submit to the contracting officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the federal trade commission, or the department of justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

- (1) Foreign interest means any of the following:
 - (i) a foreign government, foreign government agency, or representative of a foreign government;
 - (ii) any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
 - (iii) any person who is not a citizen or national of the United States.

- (2) Foreign Ownership, Control, or Influence means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.
- (c) Facility clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A facility clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all contractors or subcontractors requiring access authorizations be processed for a facility clearance at the level appropriate to the activities being performed under the contract. Approval for a facility clearance shall be based upon:
 - (1) a favorable Foreign Ownership, Control, or Influence (FOCI) determination based upon the contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the contractor;
 - (2) a contract or proposed contract containing the appropriate security clauses;
 - (3) approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
 - (4) an established reporting identification symbol code for the nuclear materials management and safeguards reporting system if access to nuclear materials is involved;
 - (5) a survey conducted no more than 6 months before the facility clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
 - (6) appointment of a facility security officer, who must possess or be in the process of obtaining an access authorization equivalent to the facility clearance; and, if applicable, appointment of a materials control and accountability representative; and
 - (7) access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of

the facility clearance.

- (d) A facility clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The contracting officer may require the offeror to submit such additional information as deemed pertinent to this determination.
- (e) A facility clearance is required even for contracts that do not require the contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the contracting officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, certificate pertaining to foreign interests, directly to the prime contractor or the contracting officer for the prime contract.

Notice to offerors - contents review
(please review before submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) the Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) if publicly owned, the contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) a copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

- (4) a list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) a summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

K.4 DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE – ADVISORY AND ASSISTANCE SERVICES (JUN 1997)

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be

provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

K.5 AGREEMENT TO USE NON-FEDERAL EVALUATORS

DOE may employ non-Federal evaluators (including employees of DOE contractors) to assist in evaluating proposals submitted in response to Solicitation No. DE-RP30-08CC60025. All such non-Federal evaluators are required to sign appropriate non-disclosure and conflict of interest statements prior to any such engagement. By submission of signed Offer under this solicitation, the Offeror consents to such review by non-Federal evaluators.

K.6 SIGNATURE/CERTIFICATION

By signing below, the bidder/offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The bidder/offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the bidder/offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Signature of the Officer or Employee	Date of Execution Responsible for the Bid/Offer
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Typed Name and Title of the Officer or Employee
Responsible for the Bid/Offer

Name and Address of Organization

Solicitation Number

(End of Provision)